

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0460
Case No. 2018-LHC-00809
OWCP No. 07-309788

ANTONIO DIAZ-MALDONADO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONRAD INDUSTRIES, INCORPORATED)	
)	
and)	DATE ISSUED: 10/29/2020
)	
AMERICAN LONGSHORE MUTUAL)	
ASSOCIATION, LIMITED c/o A.E.U.,)	
INCORPORATED)	
)	
Employer/Carrier-)	
Respondents)	ORDER

Claimant has filed letters with the Benefits Review Board asking the Board to “resolve his case.” Administrative Law Judge (ALJ) Tracy A. Daly issued a Decision and Order, filed on March 5, 2020, in which he awarded Claimant various periods of disability benefits. The Board is without authority to address any contentions regarding this decision because, as previously explained, Claimant’s August 2020 appeal was not timely filed. *Diaz-Maldonado v. Conrad Industries, Inc.*, BRB No. 20-0460 (Oct. 29, 2020); *see* 33 U.S.C. §921(a); 20 C.F.R. §§802.205, 802.206(e).

After Claimant’s appeal was dismissed, he filed a motion for modification with the Board, and the Board issued an Order advising Claimant of the proper modification procedures. *Diaz-Maldonado v. Conrad Industries, Inc.*, BRB No. 20-0460 (Dec. 3, 2020). By letters filed with the Board in May and June 2021, Claimant informed the Board he had filed a motion for modification with the ALJ in January 2021 but got no response from him. Claimant also stated he filed a motion for modification in February 2021, and the

Office of Workers' Compensation Programs (OWCP) responded, recommending denial of Claimant's motion. In a June 2021 letter, Claimant again asked the Board to review his case.

The Board has no jurisdiction to review Claimant's case at this time because his original appeal was untimely and there has been no new decision or order issued which the Board can review. 33 U.S.C. §921(b)(3); 20 C.F.R. §802.201(a).

We note the ALJ viewed Claimant's July 1, 2020, letter to him as a motion for modification, yet declined to address it. This was a timely request for modification under 33 U.S.C. §922, as it was filed within one year of the ALJ's decision.¹ Claimant has since filed two additional timely motions for modification within one year of the ALJ's decision. *See Old Ben Coal Co. v. Director, OWCP*, 292 F.3d 533 (7th Cir. 2002); *Alexander v. Avondale Indus., Inc.*, 36 BRBS 142 (2002); *Fireman's Fund Ins. Co. v. Bergeron*, 493 F.2d 545 (5th Cir. 1974) (request for modification need not be in any particular form). Once a timely motion for modification is filed, it remains pending until it is adjudicated or otherwise resolved. *Gilliam v. Newport News Shipbuilding & Dry Dock Co.*, 35 BRBS 69 (2001). As Claimant's motions for modification were timely filed but have not been addressed, he should request the district director refer his case to the OALJ for resolution as the OWCP advised in its letter dated June 3, 2021. *Ingalls Shipbuilding, Inc. v. Asbestos Health Claimants*, 17 F.3d 130, 28 BRBS 12(CRT) (5th Cir. 1994).

Additionally, Claimant asks the Board to address the district director's refusal to grant his request for a change of physicians. The district director is tasked with the supervision of a claimant's medical care, 20 C.F.R. §702.407, and has the authority to change a claimant's treating physician under 20 C.F.R. §702.406.² *See Lynch v. Newport*

¹ A motion for modification must be filed within one year of the final denial of a claim or the last payment of compensation, whichever is later. 33 U.S.C. §922.

² Section 702.406 states:

(a) Whenever the employee has made his initial, free choice of an attending physician, he may not thereafter change physicians without the prior written consent of the employer (or carrier) or the district director. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for, and appropriate to, the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.

(b) The district director for the appropriate compensation district may order a change of physicians or hospitals when such a change is found to be

News Shipbuilding & Dry Dock Co., 39 BRBS 29 (2005); *Roulst v. Marco Constr. Co.*, 15 BRBS 443 (1983). Although Claimant asserts the district director denied his request for a change of physician, there is no order denying his request. Thus, there is nothing for the Board to review at this time. Claimant may appeal an order denying the requested change directly to the Board within 30 days of the date the district director issues an order. 20 C.F.R. §802.201; *Ferrari v. San Francisco Stevedoring Co.*, 34 BRBS 78 (2000); *Jackson v. Universal Mar. Serv. Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring). If the dispute involves a question of fact, the case must proceed first to the OALJ. *Weikert v. Universal Mar. Serv. Corp.*, 36 BRBS 38 (2002).

Accordingly, we deny Claimant's request to review his case.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

necessary or desirable or where the fees charged exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges.